DEPARTMENT OF STATE REVENUE

04-20130487P.LOF

Letter of Findings Number: 04-20130487P
Tax Administration
For Tax Year 2013

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ISSUES

I. Tax Administration–Penalty.
Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2.
    Taxpayer protests the imposition of a ten percent penalty.
II. Tax Administration–Interest.
Authority: IC § 6-8.1-10-1
    Taxpayer protests the imposition of interest.

STATEMENT OF FACTS

    Taxpayer is an Indiana service company. Taxpayer did not timely file the sales tax return and did not timely remit the sales tax for the period ending May 31, 2013. The Indiana Department of Revenue ("Department") imposed a ten percent negligence penalty and interest for late filing and late payment. Taxpayer protests the imposition of the penalty and interest. An administrative hearing was held, and this Letter of Findings results. Further facts will be supplied as required.

I. Tax Administration–Penalty.

DISCUSSION

    The Department imposed a penalty and interest for late filing of the return and late payment of the sales tax for the tax period ending May 31, 2013. Taxpayer protests the imposition of the penalty. The issue is whether the penalty imposed shall be waived.

    A taxpayer who, upon examination by the Department, incurs a deficiency due to negligence is subject to a penalty. IC § 6-8.1-10-2.1(a). The Department shall waive the penalty if the taxpayer demonstrates that the failure to file the required return or pay the outstanding taxes "was due to reasonable cause and not due to willful neglect." IC § 6-8.1-10-2.1(d); see also 45 IAC 15-11-2. A taxpayer may demonstrate reasonable cause by showing affirmatively that it used "ordinary business care and prudence" in failing to file the required return or pay the outstanding taxes by the due date. Whether a taxpayer demonstrates reasonable cause for penalty purposes is a fact-sensitive question and determined on a case-by-case basis. 45 IAC 15-11-2(b) and (c).

    In this case, Taxpayer demonstrated that it is familiar with the procedure for filing of a sales tax return and payment of sales tax due. It is also familiar with the consequences of filing a sales tax return late, incurring penalties on three (3) previous occasions for late filing a return or for late payment of taxes. For the tax period in question, Taxpayer has provided specific facts showing that it had a reasonable cause for its failure to file the required sales tax return or pay the proper amount of sales tax by the due date. The penalty is not waived, and Taxpayer's protest is denied.

FINDING

    Taxpayer's protest is denied.

II. Tax Administration–Interest.

DISCUSSION

    The Department imposed a penalty and interest for late filing of the return and late payment of the sales tax for the tax period ending May 31, 2013. Taxpayer protests the imposition of the interest. The issue is whether the interest imposed shall be waived.

    A taxpayer who fails to file a required return or pay the required tax is subject to interest. IC § 6-8.1-10-1. Taxpayer has not demonstrated that it is part of an amnesty program or that a proposed assessment was issued outside the required time limit. Therefore, by statute, the Department cannot waive the interest imposed here. IC § 6-8.1-10-1. The interest is not waived, and Taxpayer's protest is denied.

FINDING

    Taxpayer's protest is denied.

SUMMARY

    Taxpayer's protest is denied on Issue I regarding the imposition of the penalty. Taxpayer's protest is denied on Issue II regarding the imposition of interest.

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